REMARKS

Claims 1-22, as amended, appear in this application for the Examiner's review and consideration. Claim 3 has been re-written in independent form and to recite the preferred carbohydrate source that appears in claim 2. A marked up claim amendment appears in Appendix A. No new matter has been introduced in making this change.

Claims 1 and 4 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,104,676 to Mahmoud et al. (hereafter "Mahmoud"). Applicants respectfully traverse this rejection.

Mahmoud relates to a weight control product (col. 1, lines 5-6). The product of Mahmoud contains low lactose milk and a dietary fiber system (Abstract). In Mahmoud, the milk ingredient which comprises the product is hydrolyzed by lactase to reduce the lactose content to a level that is tolerable by lactose-intolerant individuals (col. 4, lines 29-33).

In contrast, the prevent invention relates to an entirely different composition that to achieve an entirely different goal than Mahmoud. The present invention relates to a neutral powder composition that contains a balanced quantity of carbohydrates, fat or oil, and protein (specification, p.1, lines 4-6). The present invention is not concerned about the problem of weight control, while that is the focus of Mahmoud. The present invention also differs from Mahmoud with regard to the source of carbohydrate of the food composition.

The carbohydrate source in Mahmoud is lactose (claim 5), which upon enzymatic hydrolysis, gives sucrose, glucose and galactose. In contrast, the preferred carbohydrate source in the present invention is maltodextrin (specification, p.3, line 27, and claims 2-3), while lactose is not used at all.

Besides a different goal and a different carbohydrate source, the present invention still differs from Mahmoud in the composition of the food products. In the weight control product of Mahmoud, about 25% to 30% of the calories are provided by the protein, about 45% to 55% of the calories are provided by carbohydrates, and about 20% to 30% of the calories are provided by fat (col. 7, lines 32-35; see also, claim 4). In contrast, the present invention provides a balanced powder composition wherein the energetic amount of protein (i.e., the calorie content) is between about 20% and 30%, the energetic amount of fat or oil is between about 40% and 50%, and the energetic amount of carbohydrate is between about 25% and 35% (claim 1). The ranges of energetic fat and carbohydrate between Mahmoud and the present invention are distinct and do not do not overlap at all. And as there are three different

components and amounts recited, it is not an obvious feature to modify the amounts of Mahmoud to obtain the presently claimed amounts.

Moreover, the differences in the components and their amounts in the compositions of Mahmoud and the present invention are dictated by their entirely different goals. For compositions with the same weight, Mahmoud's product will yield less calories than that of the present invention, which serves his purpose of a weight control composition. On the other hand, the product according to the present invention is more advantageous for the currently stated purpose, i.e., to achieve a neutral powder composition that contains a balanced quantity of carbohydrate, far or oil, and protein.

Since Mahmoud sets out to solve an entirely different problem than the present invention, and since it teaches different compositions and a different carbohydrate source for the product, it does not anticipate the present invention. The Examiner's rejection has been overcome and should be withdrawn.

Claims 3, 5, 7-9 and 11-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mahmoud. Applicants respectfully traverse.

As examined above, Mahmoud fails to disclose the same carbohydrate source and compositions as the present invention. The Examiner states that Mahmoud also teaches a process of preparing its product, which renders the method of manufacturing a balanced powder composition of the present invention obvious. Applicants respectfully disagree. To serve its different purpose of controlling weight and enhancing tolerance, Mahmoud's process, which uses lactose, differs from that of the present invention in that it requires a hydrolysis step to reduce the lactose content. After the hydrolysis, the mixture is heated to between 145°F to 150° F (62.5°C to 65.5°C) in order to inactivate lactase (col. 3, lines 18-20). In contrast, the process taught by the present invention does not require a hydrolysis step at all. Furthermore, the heating temperature of the present process is higher, i.e., between 70°C and 85°C, as compared to what is required by Mahmoud (claim 4). Also, the ingredients are present in different proportions.

Since the present invention and Mahmoud have entirely different compositions, manufacturing methods and goals, one of ordinary skill in the art would not have been guided to use the teachings of Mahmoud for the purposes of the present invention. Even assuming arguendo that one were guided to use Mahmoud's teachings, there is no teaching or suggestion whatsoever to make fundamental modifications to Mahmoud in order to achieve the present methods and compositions.

The Examiner further states that although Mahmoud does not teach that its composition is devoid of any flavor as the present invention teaches, it would have been "an obvious way to enhance the weight control product line." Applicants respectfully disagree. Although flavors might in some cases affect the calories output of a food product, they do not necessarily do so. It might very well be true that many flavors only affect the tastes of food stuff, while have minimal or no effects on energy output at all. Thus, it would not have been obvious to enhance the weight control product line by changing or deleting a flavor.

Still, the Examiner states that although not taught by the reference, to supplement a beverage with key nutrients would have been an obvious way to "boost energy nutrients of a food product." Applicants respectfully disagree. Again, Mahmoud is concerned with helping consumers of the foodstuff to reduce weight. So to "boost the energy nutrients of a food product" is not the goal of Mahmoud. In fact, that runs directly opposite to Mahmoud's objectives. Thus, contrary to the Examiner's assertion, one would not have been motivated to modify Mahmoud to boost the energy nutrients. Accordingly, the Examiner's rejection based on Mahmoud has been overcome and should be withdrawn.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 103(a) as obvious over U.S. Patent No. 5,916,612 to Bonnasse et al. (hereafter "Bonnasse"). Applicants respectfully traverse.

Like Mahmoud, Bonnasse is also concerned with an entirely different problem than that of the present invention. Bonnasse addresses the problem of providing a novel and simple process for the production of a free flowing and instantly dispersible and/or soluble granular food product from carbohydrates, proteins, and oil or fats (col. 1, lines 56-59). Also, Bonnasse develops a process for obtaining granules with a high density in order to reduce the volume of the resulting powder.

In contrast, the present invention relates to a neutral powder composition that contains a balanced quantity of carbohydrates, fat or oil, and protein (Specification, p.1, lines 4-6). The present invention also differs from Bonnasse with regard to the source of carbohydrate of the food composition. The carbohydrate source in Bonnasse includes lactose (col. 3, line 1). In contrast, the preferred carbohydrate source in the present invention is maltodextrin (specification, p.3, line 27, and claims 2 and 3), and lactose is not used at all. Thus, the Examiner's rejection has been overcome and should be withdrawn.

Claims 2, 3 and 5-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnasse. Applicants respectfully traverse.

Again, the present invention differs from Bonnasse in that the former does not use lactose as a carbohydrates source at all. Claims 2, 3, 10 and 14 all recite the preferred carbohydrate source of a maltodextrin, a source that is not disclosed by Bonnasse. Bonnasse also does not teach the presently claimed amounts of components, as recited in claims 1 and 7. For example, present claim 1 requires a minimum of 31% protein while Bonnasse at most has 30%. Bonnasse also has a much higher carbohydrate content than that recited in claim 1. In contrast to Bonnasse, the present invention provides a composition that is more balanced, i.e., contains a balanced quantity of carbohydrate, fat or oil, and protein, so that the present composition is useful for clinical nutrition purposes. There is also no teaching to modify Bonnasse's compositions to obtain those of the present invention. Furthermore, as the Examiner concedes, Bonnasse lacks any teaching that the product is devoid of any flavor. This feature of the present invention is significant because it enables the product to be admixed with a wide variety of food-stuffs without changing the flavor of the food-stuffs (specification, p.5, line 25-27).

Applicants respectfully disagree with the Examiner's statement that "the lack of teaching of an added flavor is a clear suggestion that the product is devoid of flavor." A flavor will often remain in a food product if the flavor is contained in one of the components of the food product. Thus, the products in Bonnasse may very well contain one or more flavors which come from the constituents, although no flavor is "added." Furthermore, Bonnasse might fail to teach the inclusions of flavors even though it does so, simply because it does not deem flavors to be critical for its purposes to be included in the teachings. The failure of Bonnasse to teach this very well evinces their lack of knowledge or appreciation of the advantage of the present invention that an unflavored product can be added to various food stuffs with different flavors without changing the flavors of the latter.

The Examiner further states that it would have been obvious to supplement a food with the key nutrients of Bonnasse, or to include vitamins and minerals, to boost the energy nutrients of the food stuff. Applicants respectfully disagree.

Again, Bonnasse is not concerned about the energy nutrients of the food product. Rather, Bonnasse relates to the production of a free-flowing and instantly dispersible and/or soluble granular food product. One of the ordinary skill in the art with the teaching of Bonnasse will not be motivated, nor guided, to boost the nutritional content of the food product. Thus, the Examiner rejections based on Bonnasse have been overcome and should be withdrawn.

Lastly, claims 1 and 3 were rejected under 35 U.S.C. 102(b) an anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,013,569 to Rubin (hereafter "Rubin"). Applicants respectfully traverse.

Rubin relates to an infant food formulation substantially approximating human milk (see Abstract). Claim 1 of Rubin requires explicitly that 4,7,10,13,16,19 - docosahexaenoic acid (DHA), 5,8,11,14,17 - eicosapentaenoic acid (EPA) and immunoglobulins be included in the infant food formulation in order to mimic human milk. In contrast, the present invention relates to entirely different objective as explained above and does not require the inclusion of DHA, EPA and immunoglobulins.

Furthermore, Rubin fails to teach that the food composition is devoid of any flavor, which as discussed above, indicates that it lacks the appreciation of the benefits of an unflavored food composition. Since the present invention teaches a different composition than Rubin does, also Rubin fails to teach a critical feature of the present invention.

Claim 3 has been amended to recite that maltodextrin is the carbohydrate source. As Rubin does not disclose this, and in view of the preceding comments, the Examiner's rejections based on Bonnasse have been overcome and should be withdrawn.

In view of the above, the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should any issues remain, a personal or telephonic interview is respectfully requested to discuss the same in order to expedite the allowance of all the claims in this application.

No fee is believed to be due for this submission. Should any fees be due, however, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Respectfully submitted,

Date: 2/3/03

Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN
Customer Number 28765

(212) 294-3311

APPENDIX A - MARKED UP CLAIM AMENDMENTS

Claim 3 is amended as follows:

3. (amended) [The] A balanced powder composition [of claim 1,] for adding to food comprising at least one fat or oil source, at least one carbohydrate source, and at least one protein source, wherein the energetic amount of protein is between about 20% and 30%, the energetic amount of fat or oil is between about 40% and 50%, and the energetic amount of carbohydrate is between about 25% and 35%, wherein the carbohydrate source is matodextrin and the powder composition is substantially devoid of flavor.